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March 18, 2010

**VIA U.S. MAIL AND E-MAIL**

The Honorable Bernard Zimmerman  
U.S. District Court, Northern District of California  
450 Golden Gate Ave.  
Courtroom G, 15<sup>th</sup> Floor  
San Francisco, CA 94102

**Re: National Union Fire Ins. Co. of Pittsburgh, Pa. v. NVIDIA Corporation**  
**Case No.: CV 09-02046 CW**

Dear Judge Zimmerman:

We represent National Union Fire Insurance Company of Pittsburgh, Pa. ("National Union") with respect to the above-referenced insurance coverage dispute. Consistent with the Court's May 28, 2009 order related to discovery disputes between National Union and NVIDIA Corporation ("NVIDIA"), we submit this letter on behalf of National Union to request a telephonic discovery conference with the Court to resolve these issues.

The Court's intervention is requested to address two issues: (1) NVIDIA's failure to timely respond to National Union's First and Second Sets of Requests for Production of Documents ("Requests"), and (2) NVIDIA's non-responsive production of documents. National Union believes NVIDIA's failure to timely and properly respond to National Union's discovery requests is willful and designed to unfairly prejudice National Union's ability to adequately prepare for trial.

This declaratory judgment action was filed by National Union against its insured, NVIDIA, concerning the parties' rights and obligations under certain insurance policies as to numerous claims asserted against NVIDIA by its customers arising out of the alleged failure of defective NVIDIA graphics chips used in notebook computers. The central coverage issues in this coverage action are whether the chip claims involve "property damage" covered under the insurance policies and, if so, whether such "property damage" was caused by an "occurrence."

On October 27, 2010, the Court entered a case management order ("CMO") setting the fact discovery deadline for September 10, 2010. On October 30, 2009, more than four months ago, National Union propounded its First Set of Requests on NVIDIA. On December 11, 2009, more than three months ago, National Union propounded its Second Set of Requests on NVIDIA.<sup>1</sup> National Union has provided NVIDIA with numerous extensions of time to produce

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<sup>1</sup> Also on December 11, 2009, National Union issued a Rule 30(b)(6) deposition notice for NVIDIA's corporate representative. National Union has had to defer taking NVIDIA's 30(b)(6) deposition, due to NVIDIA's failure to timely produce documents in response to National Union's Requests.



**Bates & Carey LLP**

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all documents responsive to its Requests, most recently agreeing to extend the production deadline to May 1, 2010.

National Union and NVIDIA met and conferred on January 6, 2010, January 12, 2010, February 24, 2010 and March 15, 2010 to discuss NVIDIA's responses to National Union's First and Second Sets of Requests. However, the parties have not been able to resolve their discovery disputes. The transcript of the parties' most recent meet and confer teleconference can be made available upon request.

NVIDIA has consumed almost 50% of the discovery period purportedly responding to National Union's Requests. NVIDIA recently advised that completing its document production will likely take another 200 working days, meaning until well into November 2010. It has been more than four months since National Union propounded its first set of requests on NVIDIA. It has been more than three months since National Union propounded its second set of requests on NVIDIA. Despite all of this time, NVIDIA has failed to offer a valid justification for failing to fully and completely respond to National Union's discovery.

In addition, while NVIDIA has produced over 1,000,000 pages of documents to date, the documents do not appear to be directly responsive to National Union's Requests. Rather, NVIDIA has simply reproduced documents to National Union that NVIDIA previously produced in separate and unrelated litigation. More problematic is the fact that NVIDIA has produced these documents to National Union in such a manner that it is impossible for National Union to know whether such documents actually are responsive. In this regard, NVIDIA has failed to specify which documents are responsive to which Requests. In fact, based on recent discussions with NVIDIA's counsel, NVIDIA cannot confirm which, if any, of the documents produced are responsive to which, if any, of National Union's Requests. National Union is entitled to know whether NVIDIA has and is producing documents responsive to each of National Union's specific requests.

National Union respectfully requests a discovery conference to discuss a motion requesting the Court (1) order NVIDIA to produce all documents responsive to National Union's Requests by May 1, 2010; (2) order NVIDIA to formally respond to National Union's Requests by stating, with respect to each specific Request, whether NVIDIA has produced documents responsive to the Request and, if so, the bates range(s) of the responsive documents produced, or specifically state that NVIDIA does not possess any responsive documents; (3) produce a privilege log; and (4) consider all other appropriate relief warranted, including the imposition of sanctions.

Very truly yours,



Richard H. Nicolaides, Jr.

RHN:jrb

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## Confirmation Report - Memory Send

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March 19, 2010

File No.  
 6234-7228

		Phone Number	Fax Number
To:	Amanda D. Hairston, Esq. FARELLA BRAUN & MARTEL LLP	415-954-4400	415-954-4480
From:	Stephen V. Kovarik 213.580.7971		
Pages:	4		
File No.:	6234-7228		
Re:	National Union Fire Ins. Co. v. NVIDIA Corporation USDC Case No.: CV 09-02046 CW		

**Message:**

Please see attached correspondence to Magistrate Judge Bernard Zimmerman regarding the above.

PLEASE CALL (213) 250-1800 IMMEDIATELY IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION.

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**FEDERAL COURT PROOF OF SERVICE**

*National Union Fire Insurance Co. v. Nvidia Corporation* - File No. 6234-7228

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On March 19, 2010, I served the following document(s): **LETTER TO MAGISTRATE JUDGE ZIMMERMAN REQUESTING DISCOVERY CONFERENCE**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Amanda D. Hairston  
Karen P. Kimmey  
Mary Elizabeth McCutcheon  
FARELLA BRAUN & MARTEL LLP  
Russ Building  
235 Montgomery Street  
San Francisco, CA 94104  
Telephone: 415-954-4400  
Facsimile: 415-954-4480

The documents were served by the following means:

☒ (BY FAX TRANSMISSION) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission containing the time, date, and sending fax machine telephone number, which I printed out, is attached.

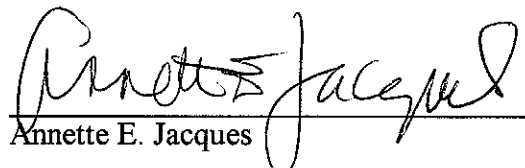
☐ (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and I deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 19, 2010, at Los Angeles, California.

  
Annette E. Jacques